

ISRAEL

C1. THE LEVY COMMISSION, "REPORT ON THE LEGAL STATUS OF BUILDING IN JUDEA AND SAMARIA," CONCLUSIONS AND RECOMMENDATIONS, JERUSALEM, 9 JULY 2012.

In January 2012, the Israeli cabinet created an advisory committee later upgraded to the "Commission to Examine the Status of Building in Judea and Samaria," better known as the "Levy Commission" after its chairman, former Israeli High Court justice Edmund Levy. Establishment of the commission was partly a response to pressure from settlement leaders to overturn the 2005 Sasson Report (see JPS 135 [vol. 34, no. 3, Spring 2005], Doc. C2, pp. 177–81), commissioned by the government of Ariel Sharon, which had established the illegality under Israeli law of "unauthorized" settlement outposts. The Levy Commission was tasked with examining the legality under international law of the entire settlement project in the West Bank, not merely the outpost question. Levy and his fellow commissioners (former Foreign Ministry legal adviser Alan Baker and former deputy president of the Tel Aviv District Court Tchia Shapira) were all closely linked to the settler movement: Levy was the sole High Court justice to oppose the 2005 Gaza disengagement, because it violated settlers' rights; Baker resides in a settlement and worked to legalize outposts; and Shapira is related to prominent right-wing

figures. Not surprisingly, the commission's report supported the long-held Israeli contention that the West Bank is not "occupied" and that therefore the prohibitions of international law (particularly those of the Geneva Convention [IV] relative to the Protection of Civilian Persons in Time of War of 1949) against settlement do not apply. The U.S. State Department responded to the report by saying the United States "do[es] not accept the legitimacy of continued Israeli settlement activity." Palestinian officials observed that the report's release coincided with the anniversary of the 2004 advisory opinion of the International Court of Justice on the Wall, which reaffirmed the West Bank's legal status as occupied territory (see JPS 133 [vol. 34, no. 1, Autumn 2004], Doc. A3, pp. 152–54). Israeli human rights organizations, including Yesh Din, B'Tselem, Peace Now, and ACRI, severely criticized the report (see this issue's Settlement Monitor), and even centrist American Jewish organizations such as the American Jewish Committee and the Israel Policy Forum found fault with it, albeit on political rather than legal grounds (see also the Quarterly Update in this issue). Reproduced here is the official English translation of the commission's conclusions and recommendations, as provided by the Israeli Prime Minister's Office at www.pmo.gov.il.

(Translation from the original and authoritative Hebrew text.)

After having considered the terms of reference set out in the Commission's mandate, and in light of what we have heard, as well as the considerable amount of material that has been presented to us by a wide range of bodies, our conclusions and recommendations are as follows:

Our basic conclusion is that from the point of view of international law, the classical laws of "occupation" as set out in the relevant international conventions cannot be considered applicable to the unique and sui generis historic and legal circumstances of Israel's presence in Judea and Samaria spanning over decades.

In addition, the provisions of the 1949 Fourth Geneva Convention, regarding transfer of populations, cannot be considered to be applicable and were

never intended to apply to the type of settlement activity carried out by Israel in Judea and Samaria.

Therefore, according to International law, Israelis have the legal right to settle in Judea and Samaria and the establishment of settlements cannot, in and of itself, be considered to be illegal.

With regard to the other issues considered, our recommendations are as follows:

1. The Government is advised to clarify its policy regarding settlement by Israelis in Judea and Samaria, with a view to preventing future interpretation of its decisions in a mistaken or overly "creative" manner. We propose that such government decision include the following principles:
 - a. Any new settlement in Judea and Samaria will be established only following a decision by the government or by a duly empowered ministerial committee.
 - b. Construction within the bounds of an existing or future settlement will not require government or ministerial decision, but such construction must be approved by the planning and zoning authorities after they have ascertained that the proposed construction is not contrary to the approved town/area plan applicable to the land in question.
 - c. Extension of an existing settlement beyond the area of its jurisdiction or beyond the area set out in the existing town plan, will require a decision by the Minister of Defense with the knowledge of the Prime Minister, prior to any of the following stages: commencement of planning and actual commencement of construction.
2. With regard to settlements established in Judea and Samaria on state lands or on land purchased by Israelis with the assistance of official authorities such as the World Zionist Organization

Settlements Division and the Ministry of Housing, and which have been defined as "unauthorized" or "illegal" due to the fact that they were established without any formal government decision, our conclusion is that the establishment of such settlements was carried out with the knowledge, encouragement and tacit agreement of the most senior political level—government ministers and the Prime Minister, and therefore such conduct is to be seen as implied agreement.

Regarding these settlements, as well as those established pursuant to a government decision but lacking definition of their municipal jurisdiction, or without having completed the planning and zoning procedures, and as a result, have been described as "unauthorized" or "illegal," the remaining outstanding procedures should be completed as follows:

- a. The area of municipal jurisdiction of each settlement, if not yet determined, must be determined by order, taking into due consideration future natural growth.
- b. The administrative blockages imposed on the planning and zoning authorities must be removed immediately, so that they may fulfill their function of examining plans that have been submitted to them by each settlement, without any further need for additional approval by the political level.
- c. Pending completion of those proceedings and examination of the possibility of granting valid building permits, the state is advised to avoid carrying out demolition orders, since it brought about the present situation by itself.
- d. With a view to avoiding doubt, it is stressed that all the settlements, including those approved pursuant to this proposed framework, may in the future, extend their boundaries in order to respond to

- their needs, including natural growth, without the need for additional government or ministerial decision, as long as the proposed extension is located within the jurisdiction of the settlement, within its boundaries as set out in the approved town plan, and has received due approval from the planning and zoning authorities.
- e. Settlements established wholly or partially on land that is subject to examination as to whether it is public or private land ("seker"), are to be considered settlements whose legal status is pending. Most of these were established years ago, and it is thus necessary to accelerate the slow examination process ("seker") in all areas of Judea and Samaria, and to complete it within a fixed time period, and to this end, even consider, utilizing assistance by external bodies. Upon completion, the processing of each settlement will continue according to the results of the land examination ("seker") and determination of the type of land, in accordance with the framework proposed by us.
 - f. In the event of conflicting claimants to land, it would be appropriate to adopt a policy whereby prior to any determination by the state regarding petitions for eviction or demolition, a thorough examination of the conflicting claims be conducted by a judicial tribunal dealing with land issues. This is all the more necessary with respect to claims of prior purchase or prescription, or where the possessor acted in a bona fide manner. Pending such determination, state authorities should be instructed to avoid taking any position in land conflicts and carrying out irreversible measures, such as eviction or demolition of buildings on the property.
 - g. To this end and with a view to facilitate accessibility by local residents to judicial tribunals, we suggest the establishment of courts for the adjudication of land disputes in Judea and Samaria, or alternatively, extending the jurisdiction of district court judges in order to enable them to handle in their courts, land disputes in Judea and Samaria.
 - h. It is necessary to draft into the security legislation a right for the public to review data banks administered by the various official bodies, including the Civil Administration, concerning land rights in the area of Judea and Samaria.
 - i. With regard to the "Order concerning Interfering Use in Private Land"—we are of the view that this order must be cancelled. In the event that it is decided to keep it in force, we propose that it be amended such that any decision by an Appeals Committee will not be recommendatory but will obligate the Head of the Civil Administration to act pursuant to such decision. The Head of the Civil Administration and other interested parties may appeal the decision of the Appeals Committee before a Court for Administrative Issues, whose decision will be final. We propose that this arrangement be applied also to other decisions of the Appeals Committee, including concerning questions of "Primary Registration" of land in Judea and Samaria.
 - j. The composition of the Appeals Committee should be changed. It is presently manned by uniformed reserve officers, jurists, who are, of necessity, perceived at the least to be subordinate to, and even under the command of the Head of the Civil Administration. We feel that this situation is not proper, and therefore recommend that the Appeals Committee be composed of non-uniformed jurists, a factor which would contribute to the general perception of the

- Appeals Committee as an independent body, acting according to its own discretion.
- k. The "Procedure for Dealing with Private Land Disputes" must be revoked. Such disputes must only be considered and adjudicated by a judicial body.
 - l. Security legislation must be amended to enable Israelis to purchase land in Judea and Samaria directly, and not only through a corporation registered in the area. We also recommend that the procedures for "Primary Registration" of land rights be accelerated and completed within a reasonable and fixed time period.
 - m. The Civil Administration should be instructed that there is no prohibition whatsoever on additional construction within the bounds of a settlement built on land initially seized by military order, and such requests should be considered at the planning stage only.
 - n. We also recommend advancing the planning and declaration procedures regarding nature preserves and parks in all those areas of Judea and Samaria under Israeli responsibility.

Finally, we wish to stress that the picture that has been displayed before us regarding Israeli settlement activity in Judea and Samaria does not befit the behavior of a state that prides itself on, and is committed to the rule of law.

If as a result of this report, the message is conveyed that we are no longer in the formative stages of the creation of our state when things were done in an informal and arbitrary manner, we will be satisfied.

The proponents of settlements, including at the most senior political levels, should internalize and acknowledge the fact that all actions on this matter can only be in accordance with the law. Similarly, official governmental bodies should act with alacrity and decisiveness in fulfilling their functions to ensure that the law is duly observed.